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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,598	06/29/2000	Jay S. Walker	00-023	1725

22927 7590 04/13/2004

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EXAMINER

THEIN, MARIA TERESA T

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/609,598

Applicant(s)

WALKER ET AL.

Examiner

Marissa Thein

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MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 and 66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-64 and 66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's "Remarks" filed on January 15, 2004 has been considered with the following effect.

Claims 1, 55, 58, 60 and 66 are amended. Claim 65 is cancelled. Claims 1-64 and 66 remain pending and an action on the merits of these claims follows.

Response to Arguments

Applicant's arguments filed on January 15, 2004 have been fully considered but they are not persuasive.

Applicants' remark that "Scroggie does not teach an entity other than a buyer selecting a subset of products for each of a plurality of products categories, where an indication of the plurality of product categories was first received as part of buyer offer information that included an offer amount associated with the plurality of product categories", as pertaining to claims 1-2, 28-29, and 55 and 58.

The Examiner notes that Scroggie teaches "an entity other than a buyer selecting a subset of products for each of a plurality of products categories, where an indication of the plurality of product categories was first received as part of buyer offer information that included an offer amount associated with the plurality of product categories". In col. 7, lines 39-51, Scroggie teaches the final list is a composite of all prior activities of the user during the current online session. Furthermore in col. 7, lines 9, lines 42-54, Scroggie teaches the system builds the final list using the session record that has accumulated by the user, wherein the list is displayed to the user. The accumulated

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session record or prior activities of the user includes shopping list, the recipes, offers, and specials (col. 9, lines 41-51). Such system which builds the final list from the accumulated record from the user is considered an entity other than a buyer selecting a subset of product, where an indication of the plurality of products categories was received as part of the user offer information. In addition, Scroggie teaches users which does not specifically mean just buyers but can include other entities. These claims were given the broadest reasonable interpretation in an effort to reduce the possibility that these claims, once issued, will be interpreted more broadly that is justified. See *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969).

Applicants remark "that the statement of motivation to combine provided by the Examiner is insufficient to meet the Examiner's burden of establishing why one of ordinary skill in the art would have made the proposed combination because the statement is a quote directly from Andrews of a result that Andrews itself states that it accomplishes", as pertaining to claims 1-2, 28-29, 55, and 58.

In response to applicant's argument that there is no motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the references may be found in Andrews (col. 1, lines 28-29).

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In response to Applicants' argument that the combination would be obvious has nothing to do with Applicants' claimed embodiments, the fact that applicant has recognized another advantage which would flow naturally from the suggestion of the prior art cannot be the basis for patentability when the difference would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicants' remark that "Andrews does not teach or suggest receiving buyer offer information that includes a buyer defined offer amount that is associated with a plurality of product categories", as pertaining to claim 13. Furthermore, Applicants' remark that "Andrews does not teach or suggest receiving a bid that is associated with a plurality of bundles or product categories", as pertaining to claim 13.

The Examiner notes that Andrews does teach or suggest receiving buyer offer information that includes a buyer defined offer amount and a bid that is associated with a plurality of product categories or bundles. In col. 2, lines 65 – col. 3, line 3, Andrews discloses bundles of products/services. A member is able to view, select and purchase the bundles. In col. 13, lines 60-63, Andrews discloses that the bundles are also auctioned to members of the bundle system. Andrews further discloses that auctions-oriented sites are where users can bid against other users for products or services (col. 1, lines 51-55). Such bundles of products/services and the auctioning of the bundles to the members are considered the receiving buyer offer information and bid that is associated with a plurality of product categories or a plurality of bundles.

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Applicants' remark that "Andrews or Scroggie teaches or suggest selecting, by an entity other than the buyer, a product or subset of products for each of a plurality of products categories", as pertaining to claim 66.

The Examiner directs Applicants' attention to the Examiner's response to Applicants' previous remark regarding claims 1-2, 28-29, and 55 and 58.

Applicants' remark pertaining to claims 12, 14-15, 34-39, and 42-48.

The Examiner directs Applicants' attention to the Examiner's response to Applicants' previous remark regarding claims 1-2, 28-29, and 55 and 58.

Applicants' remark that "Andrews or Scroggie teaches or suggests selecting, by an entity other than the buyer, a product or subset of products for each of a plurality of product categories", as pertaining to claim 60. Furthermore, Bigus also does not teach or suggest such a feature.

The Examiner directs Applicants' attention to the Examiner's response to Applicants' previous remark regarding claims 1-2, 28-29, and 55 and 58. Bigus was not cited for the selection, as recited in the claim.

Applicants' remark pertaining to claims 63-64.

The Examiner directs Applicants' attention to the Examiner's response to Applicants' previous remark regarding claims 1-2, 28-29, and 55 and 58.

Applicants' remark "that the statement of motivation to combine provided by the Examiner is insufficient to meet the Examiner's burden of establishing why one of ordinary skill in the art would have made the proposed combination because the statement is a quote directly Bigus of a result Bigus itself states that it accomplishes".

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In response to applicant's argument that there is no motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the references may be found in Bigus (col. 3, lines 42-45).

In response to Applicants' argument that the combination would be obvious has nothing to do with Applicants' claimed embodiments, the fact that applicant has recognized another advantage which would flow naturally from the suggestion of the prior art cannot be the basis for patentability when the difference would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicants' remark that "Ausubel, like Andres and Scroggie, does not teach or suggest "selecting, by an entity other than a buyer, a subset of the plurality of products for reach of the product categories", as pertaining to claims 40-41 and 61-62.

The Examiner directs Applicants' attention to the Examiner's response to Applicants' previous remark regarding claims 1-2, 28-29, and 55 and 58. Ausubel was not cited for the selection, as recited in the claim.

Applicant's remark that "the statement is also insufficient to establish a motivation to combine because again, it is a direct quote from one of the references (Ausubel) of a purpose accomplished by that reference. Accordingly, one of ordinary.....would not

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have been motivated to attempt to modify the reference in order to accomplish the purpose since the reference itself already states that it accomplishes the purpose", as pertaining to claims 40-41 and 61-62.

In response to applicant's argument that there is no motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the references may be found in Ausubel (col. 30 lines 16-18).

In response to Applicants' argument that the combination would be obvious has nothing to do with Applicants' claimed embodiments, the fact that applicant has recognized another advantage which would flow naturally from the suggestion of the prior art cannot be the basis for patentability when the difference would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicants' remark that "Kipp, like Andres and Scroggie, does not teach or suggest "selecting, by an entity other than a buyer, a subset of the plurality of products for reach of the product categories", as pertaining to claim 53.

The Examiner directs Applicants' attention to the Examiner's response to Applicants' previous remark regarding claims 1-2, 28-29, and 55 and 58. Kipp was not cited for the selection, as recited in the claim.

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Applicant's remark that "the statement to establish a motivation to combine because again, it is a direct quote from one of the references (Kipp) of a purpose accomplished by that reference. Accordingly, one of ordinary.....would not have been motivated to attempt to modify the reference in order to accomplish the purpose since the reference itself already states that it accomplishes the purpose", as pertaining to claim 53.

In response to applicant's argument that there is no motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the references may be found in Kipp (col. 2, lines 24-25).

In response to Applicants' argument that the combination would be obvious has nothing to do with Applicants' claimed embodiments, the fact that applicant has recognized another advantage which would flow naturally from the suggestion of the prior art cannot be the basis for patentability when the difference would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicants' remark that "none of the prior art references (Andrews in view of Scroggie in further view of Bigus and in further view of Kipp), alone or in combination, teach or suggest the following claim features: "receiving from the buyer an indication of

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a first product category associated with a first set of products and a second product category associated with a second set of products"; and "selecting a first product from the first set of products and selecting a second product from the second set of products", as pertaining to claim 59. Furthermore Scroggie, Andrews, Bigus or Kipp does not teach or suggest the "entity receiving the indication of product categories from a buyer and then the same entity that receives this information from the buyer performs the step of selecting the products from the product categories".

The Examiner notes the prior art references, alone or in combination, teach or suggest "the receiving from the buyer an indication of a first product category associated with a first set of products and a second product category associated with a second set of products". In Scroggie col. 9, lines 4-5, the user select a store department (product category), such meats, produce, and so forth. Such selection of a user of a store department is considered receiving from the buyer an indication of a first product category and a second product category. In addition, the prior art references, alone or in combination, teach or suggest the "selecting a first product from the first set of products and selecting a second product from the second set of products". In Scroggie col. 7, lines 39-41, the final list is a composite of all prior activities of the user during the current online session. In col. 9, lines 42-54 and Figure 10, Scroggie teaches the system builds the final lists using the session record that has accumulated by the user. Such generation of a final lists by the system based on the prior activities of the user are considered the selection, as recited in claim 59.

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The Examiner notes that “entity receiving the indication of product categories from a buyer and then the same entity that receives this information from the buyer performs the step of selecting the products from the product categories” is not commensurate in scope to the recitations of claim 59. Nonetheless, Scroggie does teach the system builds the final lists using the session record that has accumulated by the user. Such generation of a final lists by the system based on the prior activities of the user are considered the entity receiving the indication and that same entity that receives this information from the buyer performs the selection step.

Applicants’ remark that “the statement provided by the Examinerare insufficient to meet the Examiner’s burden of establishing a prima facie case of obviousness fro the reasons discussed above.....to the other statements of motivations to combine provided by the Examiner”, as pertaining to claim 59.

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine the references may be found in Andrews (col. 1, lines 28-29), Bigus (col. 3, lines 42-45), and Kipp (col. 2, lines 24-25).

In response to Applicants’ argument that the combination would be obvious has nothing to do with Applicants’ claimed embodiments, the fact that applicant has

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recognized another advantage which would flow naturally from the suggestion of the prior art cannot be the basis for patentability when the difference would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13, 16-33, 49-52, 54-58, 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No 6,285,986 Andrews et al. in view of U.S. Patent No. 5,970,469 to Scroggie et al.

Regarding claims 1-2, 28-29, 55, and 58, Andrews discloses a method and apparatus, and of facilitating comprising: receiving an indication of a plurality of product categories, each product category being associated with a plurality of products (col. 2, lines 59-65); and receiving buyer offer information, including of an offer amount (col. 1, lines 52-57; col. 13, lines 60-63).

However, Andrews does not disclose the selecting, an entity other than a buyer, a subset of the plurality of products for each of the product categories; providing an indication of the selected products; and providing the receiving indication of the plurality of product categories from the buyer. Scroggie, on the other hand, teaches the selecting, by an entity other than a buyer, and the providing an indication and the

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receiving of the indication from the buyer, as recited in the claims (Figure 10; col. 9, lines 41-col. 10, line 4). Scroggie teaches the system which builds the final list by using the session record that has accumulated from the user (selecting, by an entity other than a buyer). The final list is displayed to the user. (See Figure 10; col. 9, lines 41-col. 10, line 4; col. 7, lines 54-62) In addition, Scroggie teaches users which does not specifically mean just buyers but can include other entities.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and apparatus of Andrews, to include the selecting, by an entity other than a buyer, a subset and providing an indication of the selected products and the receiving of the indication from the buyer, as taught by Scroggie, in order to automatically sell and promote groups of products and services (Andrews col. 1, lines 28-29).

Regarding claims 3-4, 10-11, 30-33 and 56 (which depend on claim 1), Andrews discloses communication network, Internet, a web site, a telephone network, a buyer device, a personal computer, a personal digital assistant, a telephone, a controller, a merchant device, a kiosk, an interactive voice response unit, an operator, a point of sale terminal, and an automated teller machine (col. 5, line 64 – col. 6, line 59; col. 6, lines 16-19; col. 6, lines 37-59; col. 14, lines 23-29). Furthermore, Andrews discloses a single communication network and the first communication network and a second communication network (col. 1, lines 56-58; col. 5, line 64 – col. 6, line 59; col. 6, lines 16-19; col. 6, lines 37-59; col. 14, lines 23-29).

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Regarding claim 5 (which depend on claim 1), Andrews discloses a product category and a product brand associated with the product description (col. 2, lines 15-20; col. 8, lines 13-14).

Regarding claims 6-8 (which depend on claim 1), Scroggie teaches an indication of a plurality of acceptable products; the indication of the plurality of products is received from a database; and a single transaction (col. 9, lines 1-14; col. 9, lines 41-col. 10, line 4).

Regarding claim 13 (which depend on claim 1), Andrews discloses a buyer-defined offer amount (col. 1, lines 52-57; col. 13, lines 60-63).

Regarding claims 9 (which depend on claim 1), Andrews discloses receiving the buyer offer information from a buyer. (Col. 1, lines 52-57; col. 13, lines 60-63; col. 13, lines 43-47)

Regarding claims 49-52 and 54 (which depend on claim 1), Andrews discloses the payment; and arranging for the selected products to be delivered to a buyer (col. 13, lines 44-51).

Regarding claim 57 (which depend on claim 55), Andrews discloses the storage device further stores at least one of: product category database; a product database, a buyer database (Figures 4 and 5a).

Regarding claims 16-18, Andrews substantially discloses the claimed invention, however, it does not disclose the selecting a particular product for at least one of the product category; the selecting comprising at least one of: a transaction history; an address associated with the buyer; demographic information; psychographic

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information; credit rating, and another offer. Scroggie, on the other hand, teaches the selecting a particular product for at least one of the product category; selecting at least one of: a transaction history; an address associated with the buyer; demographic information; psychographic information; credit rating, and another offer; and selecting at least one of the selected products (col. 3, lines 25-31; col. 4, lines 41-45; col. 9, line 41-col. 10, line 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method Andrews, to include selecting, as taught by Scroggie, in order as taught by Scroggie, in order to automatically sell and promote groups of products and services (Andrews col. 1, lines 28-29).

Regarding claims 19-27, Andrews substantially discloses the claimed invention, however, it does not explicitly disclose subsidy. Andrews discloses the coupon, rebate or other incentives (col. 5, lines 61-63). Scroggie, on the other hand, teaches the subsidy, as recited in the claims (col. 2, lines 36-53; col. 3, lines 13-38; col. 5, lines 58-65; col. 7, line 51 – col. 8, line 9).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Andrews, to include the subsidy, as taught by Scroggie, in order to provide incentives to customers to shop (Scroggie col. 1, lines 10-11).

Regarding claim 66, Andrews discloses a method of facilitating a transaction comprising: providing an indication of a plurality of product categories, each product category being associated with a plurality of products (col. 2, lines 59-65); and providing

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buyer offer information, including of an offer amount (col. 1, lines 52-57; col. 13, lines 60-63).

However, Andrews does not disclose receiving an indication of selected products comprising at least one product from each of the plurality of product categories..

Scroggie, on the other hand, teaches the receiving of the indication of selected products, the selected products having been selected by an entity other than the buyer, as recited in the claims (Figure 10; col. 7, lines 23-51; col. 9, lines 1-14; col. 9, lines 41-col. 10, line 4). Scroggie teaches the system which builds the final list by using the session record that has accumulated from the user (selecting, by an entity other than a buyer). The final list is displayed to the user. (See Figure 10; col. 9, lines 41-col. 10, line 4; col. 7, lines 54-62) In addition, Scroggie teaches users which does not specifically mean just buyers but can include other entities.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and apparatus of Andrews, to receiving of the indication and the selected products having been selected by an entity other than the buyer, as taught by Scroggie, in order to automatically sell and promote groups of products and services (Andrews col. 1, lines 28-29).

Claims 12, 14-15, 34-39, 42-48, 60, and 63-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews and Scroggie as applied to claim 1 above, and further in view of U.S. Patent No. 6,401,080 to Bigus et al.

Regarding claims 12 and 14-15, Andrews and Scroggie substantially disclose the claimed invention, however, the combination does not disclose a binding offer, a

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plurality of product category offer amount and a selection from a list of suggested offer amounts. Bigus, on the other hand, teaches a binding offer, a plurality of product category offer amount and a selection from a list of suggested offer amounts (Figures 5 and 6; col.8, lines 53-58).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of Andrews and Scroggie to include the offers, as taught by Bigus, in order to provide a productive, adaptive, secure and efficient negotiations skills for conducting commercial transactions (Bigus col. 3, lines 42-45).

Regarding claims 34-39, Andrews and Scroggie substantially disclose the claimed invention, however, the combination does not disclose the calculating a probability than offer will be accepted based on the offer amount and at least one minimum acceptable price associated with the selected products; and a minimum acceptable price. Bigus, on the other hand, teaches the calculating and the minimum acceptable price, as recited in the claims (see at least col. 4, lines 24-51).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of Andrews and Scroggie to include the calculating and the minimum acceptable price, as taught by Bigus, in order to provide a productive, adaptive, secure and efficient negotiations skills for conducting commercial transactions (Bigus col. 3, lines 42-45).

Regarding claims 47-48, Andrews and Scroggie substantially disclose the claimed invention, however, the combination does not disclose the offer is not

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acceptable and providing a suggested modification offer. Bigus, on the other hand, teaches the suggested modification and the offer is not acceptable (see at least col. 4, lines 24-51).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of Andrews and Scroggie to include the suggested modification and the offer is not acceptable, as taught by Bigus, in order to provide a productive, adaptive, secure and efficient negotiations skills for conducting commercial transactions (Bigus col. 3, lines 42-45).

Regarding claims 42-46, Scroggie discloses the subsidy (col. 2, lines 36-53; col. 3, lines 13-38; col. 5, lines 58-65; col. 7, line 51 – col. 8, line 9).

Regarding claims 60, Andrews discloses a method and apparatus, and of facilitating comprising: receiving an indication of a plurality of product categories, each product category being associated with a plurality of products (col. 2, lines 59-65); and receiving buyer offer information, including of an offer amount (col. 1, lines 52-57; col. 13, lines 60-63).

However, Andrews does not disclose the selecting a subset of the plurality of products for each of the product categories. Scroggie, on the other hand, teaches the selecting, by an entity other than a buyer, as recited in the claims (Figure 10; col. 7, lines 23-51; col. 9, lines 1-14; col. 9, lines 41-col. 10, line 4). Scroggie teaches the system which builds the final list by using the session record that has accumulated from the user (selecting, by an entity other than a buyer). The final list is displayed to the user. (See Figure 10; col. 9, lines 41-col. 10, line 4; col. 7, lines 54-62) In addition,

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Scroggie teaches users which does not specifically mean just buyers but can include other entities.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method and apparatus of Andrews, to include the selecting, by an entity other than a buyer, as taught by Scroggie, in order to automatically sell and promote groups of products and services (Andrews col. 1, lines 28-29).

Andrews and Scroggie do not disclose the evaluating the offer. Bigus, on the other hand, teaches the evaluating the offer (col. 4, lines 24-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of Andrews and Scroggie to include the evaluating the offer, as taught by Bigus, in order to provide a productive, adaptive, secure and efficient negotiations skills for conducting commercial transactions (Bigus col. 3, lines 42-45).

Regarding claims 63-64 (which depend on claim 60), Bigus teaches the suggested modification and the offer is not acceptable (see at least col. 4, lines 24-51).

Claims 40-41 and 61-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews, Scroggie and Bigus as applied to claim 34 above, and further in view of U.S. Patent No. 5,905,975 to Ausubel. Andrews, Scroggie, and Bigus substantially disclose the claimed invention, however, the combination does not disclose the penalty. Ausubel, on the other hand, teaches the penalty (col. 30, lines 11-12; col. 30, lines 16-18). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination, to include the penalty,

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as taught by Ausubel, in order to avoid the withdrawing of bids (Ausubel col. 30 lines 16-18).

Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews and Scroggie as applied to claim 1 above, and further in view of U.S. Patent No. 5,890,136 to Kipp. Andrews and Scroggie substantially disclose the claimed invention, however, the combination does not disclose the transmitting information enabling a buyer to take possession of the selected products at a merchant. Kipp, on the other hand, teaches the transmitting information enabling a buyer to take possession of the selected products at a merchant (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination, to include the taking possession of the selected products at a merchant, in order to pickup the article (Kipp col. 2, lines 24-25).

Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews in view of Scroggie in further view of Bigus and in further view of Kipp.

Andrews discloses the payment identifier, a buyer offer, arranging for the buyer to provide payment (see at least abstract, summary). However, Andrews does not disclose an indication of a first and second product category; the binding offer; the selecting of a first and second product; evaluating the offer; providing to the buyer an indication of the first and second product; and the transmitting information enabling the buyer to take possession of the products at a merchant. Scroggie, on the other hand, teaches an indication of a first and second product category; the selecting of a first and

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second product, providing to the buyer an indication of the first and second product (see at least abstract, summary, col. 9, lines 1-65).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method of Andrews, to include the indication and the selecting and providing an indication, as taught by Scroggie, in order to automatically sell and promote groups of products and services (Andrews col. 1, lines 28-29).

Andrews and Scroggie do not disclose the binding offer and the evaluating the offer and the transmitting information enabling the buyer to take possession of the products at a merchant. Bigus, on the other hand, teaches the binding offer and evaluating the offer (col. 4, lines 24-51).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination of Andrews and Scroggie to include the binding offers and evaluating the offer, as taught by Bigus, in order to provide a productive, adaptive, secure and efficient negotiations skills for conducting commercial transactions (Bigus col. 3, lines 42-45).

Andrews, Scroggie and Bigus do not disclose the transmitting information enabling the buyer to take possession of the products at a merchant. Kipp, on the other hand, teaches the transmitting information enabling the buyer to take possession of the products at a merchant (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination, to include the transmitting information enabling the buyer to take possession of the products at a merchant (Kipp col. 2, lines 24-25).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent NO. 6,035,287 to Stallaert et al. discloses the method and apparatus for bundled asset trading.

U.S. Patent Application Publication No. 2001/0034658 to Silva et al. discloses an executable shopping lists with a single action and a bundle of multiple items offered for sale.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

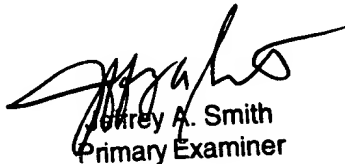
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 703-305-5246. The examiner can normally be reached on M-F 8:30-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Smith can be reached on 703-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mtot
April 5, 2004



Jeffrey A. Smith
Primary Examiner